

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of) File No.: EB-FIELDSCR-15-00019795
Vilnord Simon) NAL/Acct. No.: 201632600004
North Miami, Florida) FRN: 0025816935

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 17, 2016

Released: August 17, 2016

By the Regional Director, Region Two, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$15,000 against Vilnord Simon for operating an unlicensed radio station on 103.1 MHz in North Miami, Florida. The Commission warned Mr. Simon in writing that operation of this unlicensed station was illegal and that continued operation could result in further enforcement action. Mr. Simon's deliberate disregard of the Commission's warning warrants a significant penalty. Commission action in this area is essential because unlicensed radio stations create a danger of interference to licensed communications and undermine the Commission's authority over FM broadcast radio operations.

II. BACKGROUND

2. Mr. Simon has a history of operating an unlicensed FM broadcast station in North Miami, Florida. On October 7, 2008, Mr. Simon operated an unlicensed FM broadcast station on the frequency 103.1 MHz in North Miami, Florida.¹ Mr. Simon received a written warning, which stated that operation of an unlicensed FM broadcast station violated Federal law, must cease immediately, and could subject the operator to significant forfeitures.²

3. On January 22 and August 17, 2015, in response to complaints, agents from the Enforcement Bureau's Miami Office (Miami Office) used mobile direction-finding techniques to locate the source of radio frequency transmissions on the frequency 103.1 MHz to an FM transmitting antenna located at a multi-unit residential building in North Miami, Florida. On both days, the agents determined that the transmissions on 103.1 MHz exceeded the limits for operation under Part 15 of the Commission's rules (Rules),³ and therefore required a license. The agents consulted the Commission's records and confirmed that no authorization had been issued for the operation of an FM broadcast station at or near that address. The property owner of the multi-unit residential building later identified Mr. Vilnord Simon as the tenant where the antenna was located.

¹ See *Vilnord & Willy Simon*, Notice of Unlicensed Operation, Document No. W200932600008 (Enf. Bur. Oct. 10, 2008) (2008 NOUO).

² 2008 NOUO, citing Communications Act of 1934, as amended (Act), 47 U.S.C. §§ 301, 401, 501, 503 and 510. Mr. Simon failed to respond to the 2008 written warning.

³ Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239.

4. The agents from the Miami Office determined that, although Mr. Simon ceased operation of the unlicensed station from the multi-unit residential building,⁴ he resumed unlicensed operation from the same property several months later. On April 23, 2016, agents from the Miami Office used mobile direction-finding techniques to locate the source of radio frequency transmissions on 103.1 MHz to an FM transmitting antenna located at the same property in North Miami, Florida. The agents once again took field strength measurements of the station's signal, confirmed that the station required a license, and determined that no authorization had been issued to operate this station at or near the property in North Miami, Florida. The property owner of the multi-unit residential property again identified Mr. Vilnord Simon as the tenant where the antenna was located. A second NOUO was issued to Mr. Simon,⁵ which stated that operation of an unlicensed FM broadcast station violated the Act, must cease immediately, and could subject the operator to significant forfeitures.⁶

5. An agent from the Miami Office subsequently found information on the Internet connecting Mr. Simon to the unlicensed station. The "Radio Lumiere Inter" Facebook page listed the website www.radiolumiere.ht.⁷ Photos from the "Radio Lumiere Inter" Facebook page matched Mr. Simon's Florida driver's license photograph and a post with description "Grand Opening Simon Lumiere Restaurant" is a business registered to Mr. Simon.⁸ The Florida Department of State's Division of Corporations has public records that list Mr. Simon as the owner of several businesses including "Radio Lumiere Du Sud De La Floride, Inc.," "Radio Lumiere International Incorporated," "Simon Lumiere Restaurant, LLC," and "Simon Produce Inc."⁹ A search of the website, www.radiolumiere ht, referenced "Lumiere Inter 103.1 FM,"¹⁰ the same frequency agents found the unlicensed station operating on. A TuneIn page for "Radio Lumiere De Miami" listed a contact phone number which was the same one provided for Mr. Simon from the property owner.¹¹

III. DISCUSSION

6. We find that Mr. Simon apparently willfully and repeatedly violated Section 301 of the Act.¹² Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States without a license granted by the Commission. On January 22 and August 17, 2015, and April 23, 2016, agents from the Miami Office determined that Mr. Simon operated an unlicensed radio station on 103.1 MHz in North Miami, Florida. On April 28, 2016, Mr. Simon was warned by the Commission in writing that such unlicensed operations violated the Act.¹³ As a result, we find Mr. Simon apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed radio station.

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply

⁴ The agents observed on January 5, 2016, that the FM transmitting antenna had been removed from the multi-story residential building in North Miami, Florida.

⁵ See *Vilnord Simon*, Notice of Unlicensed Operation, Document No. W201632600007 (Enf. Bur. Apr. 28, 2016).

⁶ *Id.* Mr. Simon failed to respond to the 2016 written warning.

⁷ See Facebook, <https://www.facebook.com/Radio-Lumiere-Inter-978397862203995/> (last visited May 11, 2016)

⁸ *Id.*

⁹ Florida Department of State, Division of Corporations Homepage, www.sunbiz.org (last visited May 2, 2016).

¹⁰ See <http://www.radiolumiere ht> (last visited May 11, 2016)

¹¹ See TuneIn, <http://tunein.com/radio/RADIO-LUMIERE-DE-MIAMI-s137861> (last visited May 2, 2016).

¹² 47 U.S.C. § 301.

¹³ See *supra* para. 4.

with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁴ Here, Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Mr. Simon of up to \$18,936 for each day of a continuing violation, up to a statutory maximum of \$141,021 for a single act or failure to act.¹⁵ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁶ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹⁷ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁸

8. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation without an instrument of authorization.¹⁹ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.²⁰ As the record reflects, Mr. Simon received a written warning that unlicensed radio operations violated the Act and could subject the operator to significant forfeitures.²¹ Despite this warning, Mr. Simon operated an unlicensed FM broadcast station from a multi-unit residential building on January 22 and August 17, 2015, and April 23, 2016. The fact that Mr. Simon continued to operate an unlicensed station after being put on notice that his actions contravened the Act, the Rules, and related Commission orders demonstrates a deliberate disregard for the Commission’s authority and requirements. Thus, we find that an upward adjustment in the forfeiture amount of \$5,000 is

¹⁴ 47 U.S.C. § 503(b).

¹⁵ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note) (the 2015 Inflation Adjustment Act), requires the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). See 28 U.S.C. § 2461 note (6).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²¹ See *supra* note 1.

warranted.²² After applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$15,000, for which Mr. Simon is apparently liable.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²³ and Section 1.80 of the Rules,²⁴ Vilnord Simon is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violations of Section 301 of the Act.²⁵

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁶ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Vilnord Simon **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 13 below.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Vilnord Simon shall send electronic notification of payment to Steven Spaeth at steven.spaeth@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank –

²² See *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (Enf. Bur. 2012), *aff’g*, Forfeiture Order, 26 FCC Rcd 6854 (Enf. Bur. 2011), *aff’g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13740 (Enf. Bur. 2010) (upwardly adjusted proposed forfeiture by \$5,000 because violator operated an unlicensed radio station after receiving a written warning that such action violated the Act and Rules); *Lloyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (Enf. Bur. 2012), *aff’g*, Forfeiture Order, 26 FCC Rcd 6856 (Enf. Bur. 2011), *aff’g*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 13736 (Enf. Bur. 2010) (same).

²³ 47 U.S.C. § 503(b).

²⁴ 47 C.F.R. § 1.80.

²⁵ 47 U.S.C. § 301.

²⁶ 47 C.F.R. § 1.80.

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁹ The written statement must be mailed to the Federal Communications Commission, Enforcement Bureau, Region Two, Miami Office, P.O. Box 266468, Weston, FL 33326, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to steven.spaeth@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Vilnord Simon at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
Regional Director
Region Two
Enforcement Bureau

²⁸ See 47 C.F.R. § 1.1914.

²⁹ 47 C.F.R. §§ 1.16, 1.80(f)(3).